

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 609 of 2007

Thursday..., this the 19th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

O.K.A. Menon,
S/o. (Late) K.C. Menon,
(Retired Personnel Manager /
Cochin Shipyard Limited),
Residing at 12-A, Oakwood Apartments,
Skyline City Park, Jawahar Nagar,
Kadavanthra, Cochin - 682 020 ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Shipping, Transport Bhavan,
New Delhi : 110 001
2. Cochin Shipyard Limited,
Perumanoor, Cochin - 682 015 : through its
Chairman & Managing Director ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The case of the applicant is as under:-

- (a) The applicant initially joined the Andaman & Nicobar Administration Government service in July, 1960 and at that time the said service was under the control of Government of India, Ministry of Home Affairs. Later in 1966, in order to join the Andaman Harbour Works, under the then administrative control of Ministry of Shipping Transport, the



applicant tendered technical resignation from the previous post and joined the new organization. During 1970, the services of the applicant were transferred to the Cochin Shipyard Project, a Project under the Control of Ministry of Shipping & Transport. On 01-04-1972, the said Project was converted into Cochin Shipyard Limited, a Government of India Undertaking. The applicant continued in that organization till his superannuation on 31-12-2001.

(b) At the time of conversion of Cochin Shipyard Project as a Government of India Undertaking, the applicant was not asked any option. His service prior to 1972 was 11 years, 8 months and 17 days, which, according to the applicant qualified to be treated as qualifying service for purposes of terminal benefits etc., Persons similarly situated like the applicant were, of course, through an order of this Tribunal, held entitled to count their services prior to their joining the Cochin Shipyard Limited. However, the respondents have refused to take into account the period of 11 years plus as qualifying service and reckoned the services of the applicant only w.e.f. 01-04-1972. The applicant has challenged the decision of the respondents and claim that his services should be reckoned w.e.f. his initial date of appointment in the Andaman & Nicobar Administration Government service, as his service throughout has been without any break.

2. The case of the respondents is as under:-

(a) While the details of past services as given in the OA are not in dispute, the fact is that the applicant's services prior to his joining the Cochin Shipyard Project happened to be temporary and he was not even made quasi permanent. As such, he is not entitled to count the past services as qualifying service. As regards persons similarly situated, in their case their past services were of quasi-permanent in nature and this made the intelligible difference between their services on the one hand


and the service of the applicant on the other.

3. The applicant had filed his rejoinder, annexing a copy of the order of the DOPT dated 14th August, 2007 and reiterating his case as in the OA.
4. Respondents have filed an additional reply as well.
5. The applicant has prayed for a direction to the respondents for production of the service book of the applicant and the respondents have produced the same.
6. Counsel for the applicant submitted that in all there were five individuals who were so transferred to the Cochin Shipyard Project, which was at that time under the control of the Ministry of Shipping. His move is not one from Government to a Public Sector Undertaking but to an organization under the control of Ministry of Shipping and it was this organization that was later on constituted as a Public Sector Undertaking. And, according to the counsel, all the other four were given the benefit of counting of past service and the applicant alone had been singled out. The reason for his being singled out was stated to be that the services rendered by the applicant prior to his joining the Cochin Shipyard Project was not one of permanent or quasi-permanent but was only temporary and temporary employees were not entitled to count their past services for the purpose of qualifying services. This contention of the respondent has been rebutted by the applicant's counsel.

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7. Counsel for the respondents submitted that in view of the fact that the

nature of the services prior to the applicant's joining the Cochin Shipyard Project being one of temporary in nature, his past services cannot be counted.

8. Arguments were heard and documents perused. Initially the applicant, as per the service Book produced at the time of hearing, was appointed as Lower Division Clerk in an officiating capacity on 14-07-1960. On 14-01-1966 the applicant resigned from the post 'to join his new appointment as Upper Division Clerk' with the office of Harbour Master Andaman & Nicobar Islands Port Blair. Thereafter, on 01-03-1966, he was 'transferred to the Office of the Director (Rev) Ministry of Transport, New Delhi'. On 07-09-1970, the applicant was transferred in the same capacity to the office of the DCE, Calicut, vide Office order No. 135/70 dated 05-09-1970. In November, 1970, the applicant seems to have requested for payment of deputation/travelling allowance and also for quasi-permanency in the previous organization. Both had been rejected vide Annexure R-1 and R-3 orders and the ground for rejection was, that the transfer of the applicant had been made 'at his own request'. (It has also been stated in the relevant orders that the terms and conditions of Ministry of Home Affairs OM dated 14-07-1967 would apply. However, none of the parties had annexed a copy of the said order.) Thus, in so far as the applicant's move to Cochin Shipyard Project is concerned, his transfer being at his own request and that he having not been made quasi-permanent in the parent organization, the respondents had not counted the past service of the applicant. In so far as comparison of four other individuals, the respondents had clearly stated that in their case, the individuals had been afforded permanency/quasi permanency, a pre-requisite for the purpose

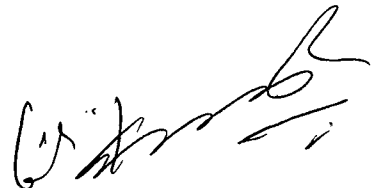


of counting of past service. Hence, it cannot be held that the applicant has been singled out.

9. Considering the above, as the requirement under the regulations i.e. quasi-permanency did not get fulfilled, rejection by the respondents of the applicant's request for counting of past services cannot be held to be either arbitrary or unjustified. That the pay of the applicant had been protected and that the leave at credit in the previous organization was accounted for would not give any right to the applicant for treating the past services for the purpose of terminal benefits as these are governed by different set of rules.

10. In view of the above, the OA being devoid of merits, is dismissed. No costs.

(Dated, the 19th June, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.